

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

DOMENIC J. F. RUSSO, *Chairman*

JOSEPH E. CONNARTON, *Executive Director*

Auditor SUZANNE M. BUMP | PHILIP Y. BROWN, ESQ. | JOHN B. LANGAN | JAMES M. MACHADO | DONALD R. MARQUIS | ROBERT B. MCCARTHY

MEMORANDUM

TO: All Retirement Boards

FROM: *Joseph E. Connarton*
Joseph E. Connarton, Executive Director

RE: Enforcement of Post-Retirement Limits on Retirees of a Public Retirement System who Take Employment with any Public Entity in Massachusetts. (*Earned Income Worksheet and Q & A Attached*)

DATE: November 1, 2013

Post-Retirement limitations are governed by G.L. c. 32 § 91(b), which states that public retirees who return to public employment with any governmental entity in Massachusetts cannot exceed service in excess of 960 hours in a calendar year, nor can any compensation in a calendar year from a city, town, the Commonwealth, or any of its subdivisions, when added to his/her retirement allowance exceed the salary currently being paid for the position from which he/she retired. If a retiree has been retired for more than 12 months such retiree may earn an additional \$15,000 in each calendar year following such 12 month period.

Accordingly, for the upcoming 2014 calendar year, any retiree retired on or before January 1, 2013 will be able to add the additional \$15,000. However, more recent retirees who retired after January 1, 2013 do not get this additional \$15,000 as earnings in 2014 but will each calendar year thereafter. In either case, NO such retiree is allowed to work for a public employer for more than 960 hours during any one calendar year. Please be advised that under Massachusetts public retirement pension law, G.L. c. 32 § 91(c), the enforcement of such post retirement limits are placed upon the employer and respective treasurer authorized to pay local employees;

(c) Each person referred to in paragraph (b) shall certify to his employer and the treasurer or other person responsible for the payment of the compensation for the position in which he is to be employed, the number of days or hours which he has been employed in any such calendar year and the amount of earnings therefrom, and if the number of hours exceeds nine hundred and sixty, in the aggregate, he shall not be employed, or if the earnings therefrom exceed the amount allowable under paragraph (b), he shall return to the appropriate treasurer or other person responsible for the payment of compensation all such earnings as are in excess of said allowable amount. The amount of any excess not so returned may be recovered in an action of contract by the



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appropriate treasurer or other person responsible for the payment of the compensation of any such person.

In addition to the statutory directive to the employer, collection of repayment for such overearnings is also governed by case law, Flanagan v. Contributory Retirement Appeal Bd., 51 Mass.App.Ct. 862, 750 N.E.2d 489 (2001). This decision authorizes the respective retirement board to act in its fiduciary capacity and collect if the employer does not collect.

In addition to providing you with this post-retirement information, PERAC would like to make you aware that this information is also being distributed to all Chief Executive Officers and Treasurers across the Commonwealth (See Enclosed Memo). It is necessary that you work with them to help identify any current employees or new hires that are currently receiving a pension allowance and provide them with the pension information, such as, current pension allowance amount, date of retirement and other salary information necessary to accurately calculate the post-retirement earnings limitations.

In an effort to assist you in the oversight of post-retirement earnings for employees who are retired from a public retirement system in the Commonwealth, attached please find a "Post-Retirement Earnings Worksheet" and "Commonly Asked Post Retirement Earnings Q & A" document. (Both attachments accompany this Memo and are posted on PERAC's website.)

The updated worksheet has been adjusted in order for individuals who retired **on or before January 1, 2013**, to receive the additional \$15,000 in earning capacity for public employment in calendar year 2014. This adjustment will also allow individuals retiring at any time to utilize the worksheet to calculate their earnings capacity for calendar year 2014. You may access this worksheet on our website, www.mass.gov/perac or download the worksheet and instructions accompanying this memo.

Thank you very much for your cooperation.

Attachments

PERAC

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MEMORANDUM

TO: City and Town Executive Officers and Treasurers

FROM: *Joseph E. Connarton*
Joseph E. Connarton, Executive Director

RE: Post-Retirement Earnings for Public Employees

DATE: November 1, 2013

As you know Massachusetts G.L. c. 32, §91(b) establishes limits on a retiree's earnings and work hours. Attached for your consideration is a copy of the most recently issued memorandum from the Commission on the subject of post retirement earnings as well as a worksheet to assist in the overall calculation of a retiree's earning capacity.

Recent news media reports remind us all of the importance of the quick and strict enforcement of the relevant statutes in this regard. I am taking the opportunity to address this memorandum to you to emphasize the importance of this issue to your respective city or town.

Any retired public employee so retired under C. 32, §91(b) may work for one or more public employers for a maximum of 960 hours during any one calendar year. The earnings for such employment shall not exceed the difference between the retiree's pension allowance and the salary from the position from which the person retired, plus \$15,000 if the retiree has been retired for more than 12 months.

I appreciate you taking the time to review the attachments and hope that you will find them helpful. Please familiarize yourself with this memo and please make certain the appropriate individual(s) within your community are aware of this memo and the post retirement limits as outlined within. You may access the "Post-Retirement Earnings" memo and attachments on our website, www.mass.gov/perac.

Thank you in advance for your cooperation and should you have questions, please feel free to contact us at the phone number listed below.

Attachments

/keb
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Calculation Worksheet for Post-Retirement Earnings in the Public Sector

Employer Unit / Department Name	2013
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*[Enter requested information in the shaded areas only for individuals who are receiving a Massachusetts (Chapter 32) pension payment]
[A copy of this completed worksheet should be submitted to the employees respective Retirement Board]*

Name of Retiree being Rehired:	
Date(s) of Reemployment of Retiree:	

MA Public Pension Information:

MA Government Entity from which Retired	
MA Public Retirement System from which Retired	
Title of Position from which Retired	
Date Retired (mm/dd/yyyy)	
Current Annual Salary of the Position from which the Individual Retired	
Total Retirement Allowance anticipated in the calendar year	
Projected Annual Earnings from <i>other</i> MA Government Entities	
Projected Number of Hours from <i>other</i> MA Government Entities	
Projected Non-hourly Annual Earnings from this Employer Unit	
Source of information provided above	

Maximum Allowable Earnings for Calendar Year:

a. Current Annual Salary of Position Retired From	\$0.00
b. Additional Earnings Allowance (c 32 § 91 (b) amended by c 176 § 50 of the Acts of 2011)	\$15,000.00
c. Projected Annual Earnings from other MA Government Entities	\$0.00
d. Projected Non-hourly Annual Earnings from this Employer Unit	\$0.00
e. Current Annual Retirement Allowance	\$0.00

A. Equals the maximum allowable amount for Public Retirees [A = ((a+b)-(c+d+e))]: **\$15,000.00**

f. Maximum Number of allowable Hours for Public Retirees	960
g. Projected Number of Hours from other MA Government Entities	0
h. Projected Number of Hours Expected to Work from this Employer Unit	
i. Hourly Rate from this Employer Unit	
j. Maximum Number of Hours allowable at the Hourly Rate from this Employer Unit	

*B. Proposed Estimated Hourly Earnings from this Employer Unit [B = (h*i)]:* **\$0.00**

C. Proposed Estimated Excess Earnings over 960 hours: **\$0.00**

D. Proposed Estimated Excess Earnings over maximum allowable amount: **\$0.00**

E. Estimated Amount Deemed Excess: **\$0.00**

If the amount in *B* exceeds the amount in *A* and / or the amount in *C* is greater than zero, the retiree is deemed an Excess Earner.
 The amount in *C* is the excess earnings attributable to exceeding the 960 hours limit.
 The amount in *D* is the earnings that exceed the maximum allowable amount in *A*.
 The amount in *E* is the larger of or equal to *C* or *D*. If paid to the retiree, it must be recouped by the employer.

Retiree Signature	Date
Department Head / Treasurer Signature	Date

INSTRUCTIONS FOR POST-RETIREMENT EARNINGS WORKSHEET

Limits on Public Employment in Massachusetts for Retirees of a Public Retirement System

Massachusetts public retirees, who return to public employment with any governmental entity in Massachusetts, are subject to significant earnings and hourly service limitations under state retirement laws. These limitations apply to all persons retired from the public sector in Massachusetts who are receiving a superannuation allowance. The attached Excel worksheet has been designed to accurately calculate the Massachusetts post-retirement earnings limitations to which employees or new hires are subject. *It does incorporate the additional \$15,000 allowable for retirees who have been retired for 12 months before the calendar year. Please note the worksheet will calculate such excess earnings for the calendar year shown at the top of the worksheet. Such date will automatically reflect the calendar year during which you are filling out such worksheet.*

Worksheet Instructions

Although it seems to be a cumbersome worksheet that may entail retrieving information from other governmental entities, it is essential that updated data is inserted into the top grid entitled "MA Public Pension Information". This information should include total projected earnings and hours worked in other governmental entities. In accordance with the statutory earnings limitation provisions, the data should be based on a **calendar year** and should include all hours of work and all earnings received by the retiree from any Massachusetts governmental entity. If the employee is only being compensated by the respective employer on a non-hourly basis and such is stated within this top grid, as "Projected Non-hourly Annual Earnings from this Employer Unit", *do not include such amount prorated in either lines "h" or "i" of the lower grid.*

The form is designed for you to include relevant data in each of the appropriate **yellow cells**, including the top line entitled "Employer Unit/Department Name and **Calendar Year**".

After inputting all the correct information into this top grid, the retiree's maximum allowable earnings for the calendar year will be automatically detailed in the second grid and totaled below it in the line entitled: **"A. Equals the maximum allowable amount for Public Retirees"** - *Please note that on the second to last line of this top grid, requesting "Projected Non-hourly Annual Earnings..." is only intended for any fixed salary compensation from the employer. Do not include any earnings paid on an hourly basis from the employer on this line.*

Once this amount is calculated, all you need to do is insert the estimated number of hours the retiree would be working during the calendar year and the corresponding hourly rate in lines "g" and "h" (yellow cells) in the next grid below.

Since retiree's earnings limits are based on **both** total earnings and hours worked, the worksheet estimates excess earnings for each limitation. However, if a member is deemed in excess of both limits, only the larger applies. Such excess amount will be displayed in line: **"E. Estimated Amount Deemed Excess"** - Under statutory post-retirement earnings limits, this excess amount is to be repaid by the retiree to the respective treasurer or paying entity. If this amount is not repaid by the retiree, the Retirement Board may recover it.

Please refer to PERAC MEMO #30/2013 for more details on retiree earnings limits at www.mass.gov/perac



Frequently Asked Questions

Post Retirement Earnings

for MA retirees working for a governmental unit

1.

I retired from the Commonwealth of MA; can I take employment with any city, town or other MA governmental employer?

Yes, but there are two strict limitations on further public employment in the Commonwealth following your retirement from a public service position. You will be limited to 960 hours in a calendar year and also your earnings will be limited during the calendar year. It applies to any public employment, regardless of whether or not it occurs in the same governmental unit from which the employee retired.

2.

I retired this past June, what can I earn in a calendar year from a public employer after retirement?

Your public employment earnings for the period of post-retirement employment in any calendar year, when added to your retirement allowance, cannot be greater than the salary currently being paid for the position from which you retired plus \$15,000. However, the additional \$15,000 is not applied in the calculation for the first full calendar year following the retirement date but each calendar year thereafter.

3.

What happens if I reach 960 hours during a calendar year but I have not reached my earnings limit?

Your public employment must cease when either limitation is reached for the remainder of the calendar year.

4.

Is this based on calendar year, fiscal year, or school year?

The earnings and hourly limits on post-retirement public employment, MGL c.32, §91(b), are based on a calendar year period, January – December.

5.

Who will keep track of the hours and earnings amount?

The responsibility of monitoring both the hours and the earnings amount lays with you the member and your employer.

6.

How do I find out the current salary, and what should be included in that amount?

You must contact your former employer; from where you retired from to find out what your salary would be had you remained in service. Any compensation that was considered pensionable at retirement, such as longevity and education incentives, should be included in the current salary amount.

7.

I work for more than one public employer, can I work 960 hours for each?

No. All hours and earnings must be added together from all MA governmental units worked. Cumulatively they cannot exceed the 960 hours or earnings limits.

8.

Does my "retirement allowance" used in calculating my earnings limit include my annuity as well as my pension portion of my annual benefit?

Yes, the "retirement allowance" used in calculating your earnings limit does include both your annuity amount as well as your pension portion of the annual benefit.

9.

I pay child support and my ex-spouse receives a portion of my retirement allowance, does that get included in the calculation of what I can earn?

Yes, the gross retirement allowance is the figure used.

10.

What if the position that I retired from no longer exists?

General normal increases will be added to the last paid salary that you received at the date of retirement.

11.

I retired and my employer privatized my position and I am now serving in such capacity as a private consultant or independent contractor; am I subject to these limitations?

Yes, you are subject to public employment earnings limits. It is irrelevant whether an employee-retiree chooses to classify him or herself as a "consultant" or "independent contractor" — the earnings limitations still apply if in fact the nature of the relationship is as an employee.

This issue is case specific, please contact PERAC directly for more guidance.

12.

I am a surviving beneficiary of a public retiree, am I subject to public employment earning limits?

No, public employer earning limitations apply only to retirees, not survivors or beneficiaries.

13.

I am a disabled retiree; can I add the additional \$15,000 to my earnings limit for public employment?

No, you may only add an additional \$5,000 to your total annual earnings from either public or private employment because of a separate legal limitation applied to all disabled retirees.

14.

I retired on December 3, 2010 from state government and since then have started my own engineering company and act as a consultant and independent contractor for the state and some municipalities. Am I subject to the public sector earning limits?

Yes, for persons who retire after July 1, 2009, earnings as a consultant or an independent contractor are limited. A retiree may not avoid the limitations by forming a company if the primary reason for the formation is to avoid the limitations.

15.

Is there any public sector re-employment that is not affected by these limitations?

Yes, you may:

- be paid for jury duty;
- be paid for services as an election officer;
- hold certain paid appointive positions; and,
- certain emergency employment may be authorized.

In addition, you may be elected to office by a direct vote of the people following your retirement, and be paid for the same without limitation; provided the position from which you retired was not the same elective office. If the position from which you retired was the same elective office, then the earnings limitations will apply to you unless at least one year has passed from the last day you held said public office and the commencement of your post-retirement elective office.

16.

I am a retired police officer and do "private details" for the town, the compensation for these details are from fees collected from private companies. Am I subject to these limitations?

Earnings for "details" which are paid by city or town payroll are included in these limitations, regardless of whether the city or town ultimately bills a private entity for the work.

17.

I was a member of a retirement system for 25 years when my public employer outsourced my job to a private company and I continued to work full-time for the new company performing the same duties and responsibilities. After serving 8 years with this company I may want to take my public retirement. Would I be subject to the earnings and hours limit if I decided to take my retirement benefit?

Yes, persons who retire after July 1, 2009, and whose earnings are derived from duties that require service to a public entity during regular business hours, are subject to the earnings and the 960 hourly limit.